

HCS HB 338 -- LESSER INCLUDED OFFENSES

SPONSOR: Corlew

COMMITTEE ACTION: Voted "Do Pass with HCS" by the Standing Committee on Judiciary by a vote of 7 to 4. Voted "Do Pass" by the Standing Committee on Rules- Legislative Oversight by a vote of 10 to 3.

This bill specifies that a court shall be obligated to charge the jury with respect to an included offense only if it is established by proof of the same or less than all the elements required to establish the commission of the offense charged, there is a rational basis in the evidence for a verdict acquitting the person of the offense charged and convicting the person of the included offense, and either party requests the court to charge the jury with respect to a specific included offense.

Failure of the defendant or defendant's counsel to request the court to charge the jury with respect to a specific included offense shall not be a basis for plain-error review on direct appeal or post-conviction relief. It shall be the trial court's duty to determine if a rational basis in the evidence for a verdict exists.

PROPOSERS: Supporters say that if there is a nested lesser-included offense, it has to be instructed. It would not be fair for a trial court to not instruct down to a lesser-included offense and then have the appeals' court reverse and instruct down. This bill would make it consistent across the board, restoring balance to what needs to be instructed down. The rules just need to be clear about when things need to be instructed down versus when they can be instructed down if requested.

Testifying for the bill were Representative Corlew and the Missouri Association of Prosecuting Attorneys.

OPPOSERS: There was no opposition voiced to the committee.

OTHERS: Others testifying on the bill say that prosecutors should not be able to argue against lesser-included offenses. It is dangerous to not include the lesser offenses even if the jury would not have thought of them otherwise. You have to instruct on every offense that includes the same elements. The bill, as written, however, would not really add clarity, because the word "rational" does not have a specific definition and judges probably think they are being clear when they rule.

Testifying on the bill was Bill Thompson.